

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)		
)	Case No.:	05-67279 jpk
SARAH PATRICIA SMITH,)		
)		
)	Chapter	7
Debtor.)		

ORDER REGARDING MOTION TO AVOID JUDICIAL LIEN

On May 6, 2005, the Debtor (the "Movant"), by counsel, filed an Amended Motion to Avoid Judicial Lien on Real Property/Residence, with respect to a judicial lien held by Portfolio Recovery Associates, LLC ("Portfolio"). The motion alleges that a judicial lien, held by the foregoing creditor, impairs an exemption to which the Debtor is entitled as to the real estate located at 622 S. Main Street, Hebron, IN 46341-8903 (the "Real Estate"). The petition, filed by the debtor, indicates that this property is in fact her address.

On February 14, 2006 an order was entered concerning this motion in which the Court raised an issue regarding the Debtor's schedules. The schedules state that the Debtor owns a one-half undivided interest, as a tenant-in-common, in the Real Estate, with her interest being valued at \$35,000.00. Schedule D states that there are no encumbrances against the subject real estate, and the exemption claimed in Schedule C is \$15,000.00. Thus, at that time the judicial lien appeared to be not avoidable at all. Subsequently, a hearing was held on March 28, 2006 and the Debtor was given 30 days to amend schedule D to reflect any outstanding property taxes.

On April 10, 2006 the Debtor filed amended schedules A, C & D. Amended Schedule A lists the Real Estate as having a market value of \$35,000 with the debtor having a 50% interest in the amount of \$17,500. Amended Schedule D lists \$356.81 in property taxes, which are clearly a lien on the subject real estate. Interestingly, Amended Schedule C exempts \$15,000 of equity pursuant to I.C. § 34-55-10-2(c)(1) and \$2,500 of equity pursuant to I.C. § 34-55-10-2(c)(2). I.C. § 34-55-10-2 provides in pertinent part:

§ 34-55-10-2. Amount of exemption

(c) The following property of a debtor domiciled in Indiana is exempt:

(1) Real estate or personal property constituting the **personal or family residence** of the debtor or a dependent of the debtor, or estates or rights in that real estate or personal property, of not more than fifteen thousand dollars (\$ 15,000). The exemption under this subdivision is individually available to joint debtors concerning property held by them as tenants by the entireties.

(2) **Other real estate** or tangible personal property of eight thousand dollars (\$ 8,000).

See, I.C. § 34-55-10-2(c)(1) & (c)(2) (West 2005) (emphasis added)

This Court deems the foregoing exemptions to be mutually exclusive and cannot be used in combination. Section (c)(1) is unambiguously for the "personal or family residence" of the debtor; while section (c)(2) is plainly for "[o]ther real estate" owned by the debtor. In this case, the Real Estate, as listed in the debtor's petition, is either a personal or family residence and she is entitled to exempt up to \$15,000 of her interest in the same. Consequently, I.C. §34-55-10-2(c)(2) does not apply, and the \$2,500 claimed pursuant to this section in Amended Schedule C is improper and will not be taken into account by this Court in calculating the extent to which Portfolio's judgment lien impairs an exemption to which the Debtor would be otherwise entitled.

As a result, given the value of the Debtor's interest in the property-- even less the \$15,000 exemption and the property taxes listed in the amount of \$356.81, there still remains equity in the amount of \$2,143.19. Based upon the foregoing, the Court finds that the judicial lien arising from a judgement entered in favor of Portfolio, in the amount of \$14,710.19, cannot be avoided in its entirety. Instead, as the lien is avoidable only to the extent it impairs an exemption, the Debtor can only avoid \$12,567.00 of Portfolio's lien.

IT IS THEREFORE ORDERED that, the foregoing motion is **GRANTED** in part, and the lien of Portfolio Recovery Associates, LLC is avoided to the extent of \$12,567.00.

Dated at Hammond, Indiana on June 21, 2006.

A handwritten signature in black ink, reading "J. Philip Klingeberger". The signature is written in a cursive, flowing style.

J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor
Trustee, US Trustee